

(vii) A transaction in which the investors in any of the partnerships involved in the transaction are not subject to a significant adverse change with respect to voting rights, the terms of existence of the entity, management compensation or investment objectives; or

(viii) A transaction in which all investors are provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(3) The Commission, upon written request or upon its own motion, may exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the definition of roll-up transaction or the requirements imposed on roll-up transactions by Items 902-915 of Regulation S-K (§§ 229.902-229.915), if it finds such action to be consistent with the public interest and the protection of investors.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction or the entity whose securities are being offered or sold to, or acquired by, limited partners of the partnerships or the limited partnerships to be combined or reorganized.

Instruction to Item 901. If a transaction is a roll-up transaction as defined in Item 901(c) of this subpart (§ 229.901(c)), the requirements of this subpart apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b) of this subpart (§ 229.901(b)).

[56 FR 57247, Nov. 8, 1991, as amended at 59 FR 63682, Dec. 8, 1994]

§ 229.902 (Item 902) Individual partnership supplements.

(a) If two or more entities are proposed to be included in the roll-up transaction, provide the information specified in this Item (§ 229.902) in a separate supplement to the disclosure document for each entity.

(b) The separate supplement required by paragraph (a) of this Item (§ 229.902) shall be filed as part of the registration statement, shall be delivered with the

prospectus to investors in the partnership covered thereby, and shall include:

(1) A statement in the forepart of the supplement to the effect that:

(i) Supplements have been prepared for each partnership;

(ii) The effects of the roll-up transaction may be different for investors in the various partnerships; and

(iii) Upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of any supplement will be transmitted promptly, without charge, by the general partner or sponsor.

This statement must include the name and address of the person to whom investors should make their request.

(2) A brief description of each material risk and effect of the roll-up transaction, including, but not limited to, federal income tax consequences, for investors in the partnership, with appropriate cross references to the discussions of the risks, effects and tax consequences of the roll-up transaction required in the principal disclosure document pursuant to Items 904 and 915 of this subpart (§ 229.904 and § 229.915). Such discussion shall address the effect of the roll-up transaction on the partnership's financial condition and results of operations.

(3) A statement concerning whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in the partnership, together with a brief discussion of the bases for such belief, with appropriate cross references to the discussion of the fairness of the roll-up transaction required in the principal disclosure document pursuant to Item 910 of this subpart (§ 229.910). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences shall be described briefly in the supplement.

(4) A brief, narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include the following information (or other information of a comparable

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character necessary to a thorough understanding of the calculation and allocation):

(i) The appraised value of each separately appraised significant asset (as defined in Item 911(c)(5) of this subpart (§ 229.911(c)(5))) held by the partnership, or, if appraisals have not been obtained for each significant asset, the value assigned for purposes of the valuation of the partnership to each significant asset for which an appraisal has not been obtained;

(ii) The dollar amount of any mortgages or other similar liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by investors in the partnership (on an equivalent interest basis, such as per \$1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per \$1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to the general partner for such general partnership interest or otherwise as compensation or reimbursement for claims against or interests in the partnership, such as foregone fees, unearned fees and for fees to be earned on the sale or refinancing of an asset.

(5) The amounts of compensation paid, and cash distributions made, to the general partner and its affiliates by the partnership for the last three fiscal years and the most recently completed interim period and the amounts that would have been paid if the compensation and distributions structure to be

in effect after the roll-up transaction had been in effect during such period. If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(6) Cash distributions made to investors during each of the last five fiscal years and most recently completed interim period, identifying any such distributions which represent a return of capital.

(7) An appropriate cross reference to selected financial information concerning the partnership and the pro forma financial statements included in the principal disclosure document in response to Item 914(b)(2) of this subpart (§ 229.914(b)(2)).

§ 229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§ 229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, cash distribution policies, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction and/or the value of the successor's assets;